

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TEMUJIN KENSU, INDIVIDUALLY, AND
OF BEHLF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

v.

JPAY INC.

Defendant.

Case No. 2:18-cv-11086-SFC-PTM

Hon. Sean F. Cox
Mag. Judge Patricia T. Morris

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**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL
ARBITRATION**

Plaintiffs Temujin Kensu and the class, by and through their attorneys, in response to Defendant's motion to compel arbitration and motion to dismiss, hereby move this honorable court to render the Defendant's motions moot pursuant to the Plaintiffs' filing of their First Amended Complaint.

By operation of law, the filing of an amended complaint renders a prior complaint void and moots any motions to dismiss or otherwise based on the prior complaint. Plaintiff respectfully suggests that the filing and delivery of the First Amended Complaint moots the Defendant's pending motions to dismiss and compel arbitration, which should be denied without prejudice to any arguments the Defendant may raise with respect to Plaintiff's First Amended Complaint.

An amended complaint supersedes an original complaint and renders the original complaint without legal effect. *Glynn v. Ocwen Loan Servicing, L.L.C.*, 2014 U.S. Dist. LEXIS 155865, at *2-3 (E.D. Mich. Nov. 4, 2014) (citing *In Re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000) (when plaintiff files an amended complaint, the new complaint supersedes all previous complaints and controls the case from that point forward)). When a Plaintiff files "its Amended Complaint, its original Complaint [is] rendered a nullity...and [a]s a result, all motions that seek dismissal of the original Complaint are now moot." *Koenigs, L.L.C. v. City of Savannah*, 2018 U.S. Dist. LEXIS 16204, at *10-11, (W.D. Tenn. Feb. 1, 2018).

Denial due to mootness is required here in light of the First Amended Complaint. The First Amended Complaint modifies both the legal theory and factual basis for Plaintiff's claims. Plaintiffs request that the Defendant's motions predicated on the original Complaint are denied as moot.

Dated: June 21, 2018

Respectfully Submitted,

EXCOLO LAW, PLLC

/s/ Keith Altman

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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2018, I presented the foregoing paper to the Clerk of the Court for filing and uploading to the ECF system, which will send notification of such filing to the attorneys of record listed herein.

/s/Keith Altman
Keith Altman (P81702)